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Control and Regulation of Human Trafficking in Nigeria: A Legal Framework Analysis

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Human trafficking is a pervasive and complex issue affecting millions worldwide. Despite international efforts to combat trafficking, the scourge persists, necessitating a critical examination of the existing legal framework as it relates to Nigeria. This article undertakes a study of Nigeria's legal framework and the various measures adopted by the Nigerian government to curb the menace of human trafficking, with a view to identifying best practices and areas for improvement. This article employs the analytical approach to Nigeria's Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015. The article examines the definition of trafficking, the prosecution and punishment of offenders, the protection of victims, and prevention strategies employed by the Nigerian government. The findings reveal that while Nigeria has made significant strides in combating human trafficking, there are still gaps to be filled with respect to penalties for offenders. Nigeria's legislation, although well-intentioned, is often criticized for its limited scope and inadequate enforcement mechanisms. This article contributes to the existing literature on human trafficking by providing a nuanced understanding of the control measures employed in Nigeria. The article highlights the need for a more coordinated and effective approach to combating human trafficking, emphasizing the importance of international cooperation, capacity building, and community engagement. Ultimately, this article aims to inform policy and legislative reforms, promoting a more robust response to the scourge of human trafficking.

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INTRODUCTION

The crime of trafficking in persons affects virtually every country in the world. It involves the exploitation of men, women and children within a country and across borders. Trafficked victims are used for a variety of activities, including prostitution, pornography, forced labour, terrorism, ritualism, organ removal, debt bondage, domestic servitude and other forms of involuntary servitude.¹

In Nigeria, trafficking in persons is both a violation of human rights and a crime. The rights of persons including trafficked persons are recognized under the *Constitution of the Federal Republic of Nigeria*,² the *African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act*³ and the *Child's Rights Act*.⁴ However, specific rights of trafficked persons are stated in the *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act*.⁵

CONCEPTUALISATION OF
TRAFFICKING IN PERSONS

Definition of Trafficking in Persons

Trafficking in persons also known as human trafficking is the relocation of people from their

places of origin to other places by middlemen or agents for economic gain and exploitation. It involves recruiting people and transporting them to destinations where they are used for purposes of forced and exploitative labour.⁶ It is the practice of keeping individuals in a state of bondage or servitude. The practice has many features of slavery. Slavery is defined in Article 1 (1) of the *Slavery Convention 1926* as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. Section 82 of the *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015* defines a slave as a person who is held in bondage, and whose life, liberty, freedom and property are under the absolute control of someone.⁷

Trafficking in persons cannot be divorced from the phenomenon of slavery, because, both involve the acquisition and transportation of human beings across national borders for servitude, with or without the consent of the person trafficked.⁸

Under international law, article 3 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the Convention Against*

¹ UNESCO Policy Paper Poverty Series No. 14.2 (E), *Human Trafficking in Nigeria: Root Causes and Recommendations*, available at <<http://unesdoc.unesco.org/images/0014/001478/147844e.pdf>> (accessed 27 October 2024); United Nations Office On Drugs And Crime: *Global Report on Trafficking in Persons 2012* available at <https://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf> (accessed 27 October 2024); B. Olateru-Olagbegi, and A. Ikpeme, "Review of Legislation and Policies in Nigeria on Human Trafficking and Forced Labour" available at <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_083149.pdf> (accessed 19 October 2024).

² Cap. C23 Laws of the Federation of Nigeria 2004.

³ Cap. A9, Laws of the Federation of Nigeria 2004.

⁴ Cap. C50 Laws of the Federation of Nigeria 2004.

⁵ Act No. 4 of 2015.

⁶ Z. Sabina, 2009, "Trafficking from Nigeria Rises Sharply" available at <<http://ipsnews.net/news.asp?idnews=48405>> (accessed 12 October 2024).

⁷ Slavery is defined in article 1 (1) of the *Slavery Convention 1926* as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. *Slavery Convention* was signed in Geneva on 25 September 1926 and entered into force on 9 March 1927, in accordance with article 12 thereof; available at <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx>> (accessed 27 October 2024). *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015* criminalizes dealings in slavery. The right to be free from slavery and servitude is recognized under article 4 of the *Universal Declaration of Human Rights*, Article 5 of the *African Charter on Human and People's Rights* and article 8(1) and (2) of the *International Covenant for Civil and Political Rights*. Under Nigerian law, Section 34(1)(b) of the *Constitution of the Federal Republic of Nigeria* guarantees the right to freedom from slavery or servitude.

⁸ L. Y. Akor, Trafficking of Women in Nigeria: Causes, Consequences and the Way Forward, *Corvinus Journal of Sociology and Social Policy*, 2 (2), 2011, 89-110; available at <<http://cjssp.uni->

Transnational Organized Crime,⁹ defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation. Consent of a victim of trafficking in persons to the intended exploitation is irrelevant where any of the means stated in the definition is used.¹⁰

A similar definition exists in Nigeria under the *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015*. Section 82 of the Act defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power of position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person or debt bondage for the purpose of placing or holding the person whether for or not in involuntary servitude (domestic, sexual or reproductive) in forced or bonded labour, or in slavery-like conditions, the removal of organs or

generally for exploitative purposes.¹¹ Where any of the means set forth in the definition has been used, consent of a victim of trafficking in persons to the intended exploitation set forth in the definition of trafficking in persons in this Act shall be irrelevant.¹²

The definition of trafficking in persons under the Trafficking Act also covers trafficking in children. Section 13(6) provides that the recruitment, transportation, transfer, harbour or receipt of a child for the purpose of exploitation shall be considered trafficking in persons even if this does not involve any of the means set forth in the definition of trafficking in persons in the Trafficking Act.

Trafficking in persons also involves the smuggling of people (or migrants) across borders for exploitative purposes. Article 3 of the *Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the Convention Against Transnational Organized Crime*¹³ defines smuggling of migrants as the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident. Similarly, section 82 of the Trafficking Act 2015 defines smuggling of persons as arranging or assisting a person's illegal entry into any country of which the person is not a citizen or permanent resident, including Nigeria, either knowing or being reckless as to the fact that the person's entry is illegal, in order to obtain a financial or other material benefit.¹⁴

corvinus.hu/index.php/cjssp/article/view/47> (accessed 27 October 2024)

⁹ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention against Transnational Organized Crime* was adopted on 15 November 2000 and entered into force on 25 December 2003; available at <<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>> (accessed 27 October 2024).

¹⁰ *Ibid*, Article 3(b).

¹¹ *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015*, Section 82 thereof exploitation includes at a minimum the exploitation of the prostitution of

others or other forms of sexual exploitation, derivation of the offspring of any person, forced labour or services or practices similar to slavery, servitude or the removal of organs.

¹² *Ibid*, Section 13(5).

¹³ *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the Convention Against Transnational Organized Crime* was adopted by the General Assembly of the United Nations on 15 December 2000 and came into force on 28 January 2004; available at <<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>> (accessed 27 October 2024).

¹⁴ Financial or other material benefit is defined under section 82 of the Trafficking Act 2015 include any type of financial

Trafficking in persons is an organized crime carried out by organized criminal groups. Organized crimes are widespread criminal activities that are coordinated and controlled through a central syndicate.¹⁵ The syndicate rely on unlawful activities for income. Article 2(a) of the *Convention Against Transnational Organized Crime*¹⁶ defines an organized criminal group as a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

Forms and Trends of Trafficking in Persons

There are basically two forms of trafficking in persons - domestic (internal) and international (also known as external, cross border or transnational)¹⁷ trafficking in persons.¹⁸ Domestic trafficking takes place within a country usually from rural areas to urban areas while international trafficking involves the movement of people from one country (source country) to another country (destination country).¹⁹ In transporting trafficked persons, traffickers sometimes need to pass through some countries (known as transit countries) in order to get to the destination countries.

A 'source country' (or country of origin) is a country from which people are recruited. Usually, these countries are under-developed or developing countries and may have been weakened by war, corruption, economic crisis,

political crisis, natural disasters or climate change. A 'transit country' is a country through which persons are conveyed to the destination country and a 'destination country' is the country where trafficked persons are utilized or exploited. These countries are generally those with a high demand for trafficked persons.

Factors Responsible for Trafficking in Persons

There are a number of factors responsible for trafficking in persons. In Nigeria, poverty is central to trafficking in persons. As a result of being offered vain promises of better living conditions elsewhere, people fall prey to traffickers. Also, parents and guardians who are unable to take care of their children or wards give them up to traffickers based on false promises of a better life for the children elsewhere and upon being given money and other things in exchange for the children.

Other factors are unemployment or lack of alternative income-generating activities;²⁰ high illiteracy level;²¹ financial gains for traffickers; armed conflicts or lack of effective protection against discrimination and exploitation; migration as a response to armed conflict and insecurity resulting in vulnerable large refugee populations; increase in demand for cheap labour which continues to attract people from poorer regions; global expansion in commercial sex industry greatly driven by demand; weak governance; corrupt law enforcement officials; inadequate funding of institutions established to combat trafficking in persons; indifference and a lack of

or non-financial inducement, payment, bribe, reward, advantage or service (including sexual or other services).

¹⁵ B. A. Garner, (Ed.) *Black's Law Dictionary*, ninth edition, (West Publishing Co., USA, 2004), p.1210.

¹⁶ *Convention Against Transnational Organized Crime* was adopted on 15 December 2000 and entered into force on 29 September 2003; available at <<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOC%20Convention-e.pdf>> (accessed 27 October 2024).

¹⁷ *Ibid*, Article 3(2) thereof states that an offence is transnational in nature if: (a) It is committed in more than one State; (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; (c) It is committed in one State but involves an organized criminal group that engages in criminal activities

in more than one State; or (d) It is committed in one State but has substantial effects in another State.

¹⁸ B. Olateru-Olagbegi, *Human Trafficking & Global Supply Chains: Understanding the Challenges & Risks for Business & Workers* available at <<http://www.ohchr.org/Documents/Issues/Trafficking/Consultation/2012/presentations/WOCON-%20UnderstandingtheChallenges%20Risks.ppt>> (accessed 27 October 2024).

¹⁹ *Ibid*.

²⁰ M. Ladan, *Migration, Trafficking, Human Rights and Refugees Under International Law: A Case Study of Africa* (Ahmadu Bello University Press Ltd, 2004). 110

²¹ A. Lipede, *Women Trafficking and Insecurity in West Africa: Character, Trend and Scale in Nigeria*, in B. M. Barkindo, and A. Lipede (Eds.) *Human Trafficking and Economic Crimes Across Nigeria's International Borders* (Spectrum Books Ltd, 2007). 5

domestic commitments to protect those most at risk through legislation, awareness, information, and training of the authorities responsible to provide protection; inability of trafficked victims to enforce their rights let alone get compensated for the wrong suffered, not being able to afford the high cost of legal services; and meagre punishments given by courts in human trafficking cases.²²

Legal Framework for The Control Of Trafficking In Persons In Nigeria

In 2003, Nigeria enacted the first anti-trafficking legislation- Trafficking in Persons (Prohibition) Enforcement and Administration Act 2003 which was amended in 2005. This legislation was later repealed and replaced with Trafficking in Persons (Prohibition) Enforcement and Administration Act No.4 of 2015. The 2003 Act, was a platform for the efforts of the Nigerian Government in combating trafficking in persons in over a decade and this has earned Nigeria a Tier 2 rating in the year 2014 – 2016. Trafficking Report of the United States of America. The Act established the national anti-trafficking agency, the National Agency for the Prohibition of Trafficking in Persons and Other Related Matters (NAPTIP), under the Federal Ministry of Justice, for investigating, arresting and prosecuting traffickers, rehabilitating victims, collaborating with other countries' agencies on trafficking issues, and creating public awareness about the scourge of trafficking in persons.²³

Presently, in Nigeria, there are laws which recognize the rights of trafficked persons and

those that prohibit trafficking in persons. The rights of Nigerians (including trafficked persons) are recognized under the *Constitution of the Federal Republic of Nigeria*,²⁴ the *African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act*²⁵ and the *Child's Rights Act*.²⁶ Trafficking in persons constitutes offences under the *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act* (as amended)²⁷ *Criminal Code Act*,²⁸ *Penal Code*,²⁹ *Labour Act*³⁰ and *Child's Rights Act*.³¹ Cases of trafficking in persons in Nigeria are mainly prosecuted under the *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act*.

In Nigeria, there are institutions involved in combating trafficking in persons. However, the agency specifically established to combat trafficking in persons in Nigeria is the National Agency for Prohibition of Traffic in Persons and Other Related Matters (NAPTIP). The agency works in collaboration with other law enforcement agencies involved in curbing the menace by virtue of their functions. These are - the Nigeria Police, Nigeria Immigration Service, Nigeria Customs Service and Non-Governmental Organizations. However, NAPTIP and these other relevant law enforcement agencies are unable to effectively enforce anti-trafficking laws and monitor trafficking in persons in Nigeria due to gross underfunding. NAPTIP officials are not present at the entry points in Nigeria, that is, airports, sea ports and land border posts and as

²² UNESCO Policy Paper Poverty Series No. 14.2 (E), Human Trafficking in Nigeria: Root Causes and Recommendations, *op cit* note 2.

²³ *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015 No. 4*, Section 2 thereof.

²⁴ *Constitution of the Federal Republic of Nigeria Cap. C23 Laws of the Federation of Nigeria 2004*. Fundamental Rights (Enforcement Procedure) Rules 2009, Order 1 rule 2 thereof provides that human rights include fundamental rights and defines fundamental rights as any of the rights provided for in Chapter IV of the Constitution of the Federal Republic of Nigeria and also includes any of the rights stipulated in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.

²⁵ *African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act CAP. A9 Laws of the Federation of Nigeria 2004*.

²⁶ *Child's Rights Act C50 Laws of the Federation of Nigeria 2004*.

²⁷ *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act No. 4, 2015*,

²⁸ *Criminal Code Act CAP C38 Laws of the Federation of Nigeria 2004*. The *Criminal Code Act* is applicable only in the Southern part of Nigeria.

²⁹ *Penal Code Laws of the Federation of Nigeria 2004*. The *Penal Code* is applicable only in the Northern part of Nigeria.

³⁰ *Labour Law Cap. L1 Laws of the Federation of Nigeria 2004*.

³¹ *Child's Rights Act, Cap. C50 Laws of the Federation of Nigeria 2004*.

such cannot apprehend traffickers at the point of exit or entry, as the case may be.

NAPTIP being the arrowhead in combating trafficking in persons should have its trained officials at all entry points into Nigeria, to apprehend trans-border traffickers. Also, NAPTIP provides shelter for victims for just six weeks after which the victims are released to go home. Such victims are simply re-trafficked since they are usually without a source of income and unable to cater for themselves. With regards to the other law enforcement agencies, the common challenges are inadequate funding, and lack of expertise in monitoring and investigating trafficking in persons and also in the treatment of victims. This is compounded by the constraints encountered as a result of the reluctance of parents and guardians of victims to give valuable information about traffickers and their agents. It is also difficult to get them or the victims to testify in court for fear of reprisals. All these have, to a large extent, contributed to the increase in the incidences of trafficking in persons in Nigeria.

THE RELEVANT LAWS FOR THE CONTROL OF TRAFFICKING IN PERSONS

Constitution of the Federal Republic of Nigeria

Under the Constitution of the Federal Republic of Nigeria, trafficking in persons constitutes a violation of the right to human dignity under section 34, the right to liberty and freedom of movement under sections 35 and 41, (where the movement of trafficked persons is restricted) and right to life under section 33 (where trafficked persons are killed or threatened to be killed by traffickers).

African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act

Under the *African Charter on Human and Peoples' Rights (Ratification and Enforcement)*

Act, trafficking in persons violates the right to human dignity under section 5 of the Charter, the right to liberty and security of his person under section 6, the right to freedom of movement and residence under section 12(1), right to health under section 16,³² the right to life and integrity of person under section 4 of the Act. Trafficking in persons also violates the rights of children to education under section 17 of the Act. This is because are taken away from their parents/guardians, to places where they would be subjected to long hours of exploitative labour, thereby hindering their attendance at school.

Trafficking in Persons (Prohibition) Law Enforcement and Administration Act

The Act was enacted in 2015 and it is the main legislation that prohibits acts and elements of trafficking in persons. It is applicable throughout the country. In Nigeria, most human trafficking cases are prosecuted under the Act. However, the sentences meted out by the courts are lower than what is stipulated in the Act.³³ In spite of the stiff penalties provided under the *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015*, courts still mete out low sentences. The courts hide under the provisions of section 416(2) of the *Administration of Criminal Justice Act 2015* in reviewing the sentences. Section 416(2) of the Act provides that in exercising its discretion of sentencing or review of sentence, the court shall take into consideration the following factors, in addition to the provisions of section 401 of the Act- (a) each case shall be treated on its own merit; (b) the objectives of sentencing, including the principles of reformation, shall be borne in mind in sentencing a convict; (c) an appeal court may, in a proper case, reduce the sentence imposed by the trial court especially where it is excessive or based on wrong principles or an appeal court may increase the sentence imposed by the trial court especially where it is inadequate (d) a trial court shall not pass the maximum sentence on a first offender; (e)

³² *African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act*, Article 16 (1) thereof states that every individual shall have the right to enjoy the best attainable state of physical and mental health.

³³ *Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015*, Section 36(1) states that the High Court has the jurisdiction to try offences, hear and determine proceedings arising under the Act.

the period spent in prison custody awaiting or undergoing trial shall be considered and computed in sentencing a convict; (f) trial court shall conduct an inquiry into the convict's antecedents before sentencing.

The Act further provides that sentencing a convict to a term of imprisonment shall apply only to those offenders who should be isolated from society and with whom other forms of punishment have failed or are likely to fail.³⁴ Section 401(2) of the Act provides that in determining a sentence, the court shall have the following objectives in mind, and may decide in each case the objectives that are more appropriate or even possible: (a) prevention, that is the objective of persuading the convict to give up committing offence in the future because the consequence of crime is unpleasant; (b) restraint, that the objective of keeping the convict from committing more offence by isolating him the society; (c) rehabilitation that is, the objective of providing the convict with treatment or training that will make him into a reformed citizen; (e) education of the public, that is, the objective of making a clear distinction between good and bad conduct by punishing bad conduct; (f) retribution, that is, the objective of giving the convict the punishment he deserves and giving the society or the victim revenge; and (g) restitution, that is, the objective of compensating the victim or family of the victim of the offence.

Similarly, section 36(3) of the *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015* provides that the penalty imposed on a person convicted of an offence under the Act may be reduced in such manner as the Court deems fit where that person has before any proceeding, made possible or facilitated the identification of other accused persons and their sponsors or who, after the commencement of the proceedings, has made possible or facilitated the arrest of such persons. A combination of the two legislations gives the Judge a great opportunity to

reduce any sentence prescribed under the Act. It should be noted that trafficking in persons is a horrendous crime. The gravity of the crime and its horrifying effects should be the most important consideration of the court, and as such the sentence should be severe (as stated in the law) if it is to serve as deterrence.

Under section 64(1), the NAPTIP has a duty to provide transit shelters for rescued trafficked persons, particularly women and children. This is with the aim of providing protection, assistance, counselling, rehabilitation and training for the rescued victims in order to facilitate their reintegration into society.³⁵ Section 61(i) of the Act mandates NAPTIP to take steps to maintain and rehabilitate facilities provided for trafficked persons. The Act further gives the victim the right to information on relevant court and administrative proceedings in relation to his/her case under section 63(b), the right to assistance to enable the victim's views and concerns to be presented and considered at appropriate stages of criminal proceedings against the traffickers and right to counselling and information in a language that the victim can understand- (section 63(c) of the Act).

A trafficked victim irrespective of his immigration status, is entitled to compensation, restitution and recovery for economic, physical and psychological damages which will be assessed and paid out of forfeited assets of the convicted trafficker.³⁶ Payment of compensation to the victim is an addition to any other punishment ordered by the court.³⁷ Sadly, however, since the enactment of this Act, courts have yet to order the payment of compensation to trafficked victims.

Under the Act, a trafficked person has the right to institute a civil action against a trafficker and any other person including a public officer who had exploited or abused his person, provided that the amount awarded by the Criminal Court shall be

³⁴ Section 416(2)(k) of the *Administration of Criminal Justice Act 2015*.

³⁵ *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015*, Section 64(2) thereof.

³⁶ *Ibid*, Section 65(1)

³⁷ *Ibid*, Section 65(2).

taken into consideration in the determination of the amount of compensation to be awarded in the civil suit.³⁸

In addition to any sentence imposed by the Court for any offence committed under the Act, the court has the power to order that a convicted person forfeits to the Victims of Trafficking Trust Fund, any property, asset or fund with accrued interest, article, substance, device, material or Conveyance which has been used or facilitated the commission of the offence or the proceed of any unlawful activity under the Trafficking Act.³⁹ In order to achieve this, as soon as a person is arrested or under investigation, NAPTIP immediately traces and attaches all the assets and properties of the person acquired in the process of committing the offence.⁴⁰

The Victims of Trafficking Trust Fund was established under section 67(1) of the Act to receive all proceeds of the sale of assets and properties derived from acts which constitute offences under the *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015*.⁴¹ The money in the Fund is to be used to pay compensation and damages to trafficked persons. The Trust Fund is used to pay compensation, restitution and damages to trafficked persons;⁴² and to fund victim support services for trafficked persons.⁴³

The Act also prohibits acts and elements of trafficking in persons.⁴⁴ Section 13(2) of the Act provides that any person who recruits, transports, transfers, harbours or receives another person by means of - (a) threat or use of force or other forms of coercion, (b) abduction, fraud, deception, abuse of power or position of vulnerability,⁴⁵ or (c) giving or receiving of payments or benefits to achieve the consent of a person having control

over another person, for the purpose of exploitation of that person; Commits an offence and is liable on conviction to imprisonment for a term of not less than 2 years and a fine of not less than N250, 000. Section 21 prohibits buying, selling, hiring, letting or otherwise obtaining possession or disposal of any person with intent, knowing it to be likely or having reasons to know that such a person will be subjected to exploitation. The punishment for this offence is imprisonment for a term of not less than 5 years and a fine of not less than N2,000,000.⁴⁶

Importing any person into Nigeria for the purpose of prostitution or sexual exploitation constitutes an offence under section 14(a) of the Act punishable with an imprisonment term of not less than 5 years and a fine of not less than N1, 000,000.00. Exporting a person from Nigeria to another country for forced prostitution or sexual exploitation is an offence under section 14(b) of the Act punishable with an imprisonment term of not less than 5 years and a fine of not less than N1, 000,000. Organizing, promoting or encouraging foreign travels for the purpose of prostitution or other forms of exploitation of any person, is an offence punishable by an imprisonment term of not less than 7 years and a fine of not less than N 1,000, 000.⁴⁷

Conspiracy to commit a trafficking offence under the Act attracts the same punishment provided for the actual commission of the offence under the Act⁴⁸ and where there was conspiracy but the offence was not committed, the punishment is half of the punishment for the actual commission of the offence.⁴⁹

With respect to escaping from custody, section 28(a) provides that any person who escapes from lawful custody of NAPTIP commits an offence

³⁸ *Ibid*, Section 65(3).

³⁹ *Ibid*, Section 36(2).

⁴⁰ *Ibid*, Section 53(1).

⁴¹ *Ibid*, Section 67(1)(c) thereof.

⁴² *Ibid*, Section 67(4)(a) thereof

⁴³ *Ibid*, Section 67(4)(b) thereof.

⁴⁴ *Ibid*, Section 13 thereof.

⁴⁵ *Ibid*, Section 13(3) thereof defines abuse of position of vulnerability as intentionally using or otherwise taking advantage of an individual's personal, situational or

circumstantial vulnerability to recruit transport, transfer, harbour or receive that person for the purpose of exploiting him or her such that the person believes that submitting to the will of the abuser is the only real or acceptable option available to him or her and that this belief is reasonable in the light of the victims situation

⁴⁶ *Ibid*, Section 21 thereof.

⁴⁷ *Ibid*, Section 18 thereof.

⁴⁸ *Ibid*, Section 27(a) thereof.

⁴⁹ *Ibid*, Section 27(b) thereof.

and is liable on conviction to imprisonment for a term of 5 years.⁵⁰ In addition, any person who aids or abets the escape of a person in lawful custody of the Agency, or suspected to have committed an offence under any of the provisions of this Act, commits an offence and is liable on conviction to imprisonment for a term of 5 years.⁵¹

Attempt to commit an offence under the Act attracts half of the punishment for the actual commission of the offence.⁵² Where a person is charged with any of the offences under the Act and the evidence establishes an attempt to commit that offence, he may be convicted of having attempted to commit the offence and will be liable on conviction to half of the punishment for the commission of the offence.⁵³ Where a person is charged with an attempt to commit an offence but the evidence establishes the commission of the full offence, the offender shall not be entitled to acquittal but shall be convicted for the commission of the offence as provided under the Act.⁵⁴

Where an offence under the Act is committed by a body corporate and is proved to have been committed on the instigation or with the connivance of or is attributable to any neglect on the part of a director, manager, secretary of the body corporate or any person purported to act in any such capacity, the officer shall be liable on conviction to the same punishment provided under the Act for individuals who commit the offence.⁵⁵

If a body corporate is convicted of an offence under the Act, it shall be liable to a fine of N1 0, 000, 000 and the Court may issue an order to wind up the body corporate and its assets and properties transferred to the Victims of Trafficking Trust Fund.⁵⁶ However, an officer of the company shall not be liable to any punishment if he proves that

the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.⁵⁷

Obstructing an authorized officer of NAPTIP in the lawful exercise of his duties⁵⁸ or failure to comply with lawful enquiry or requirements made by an authorized officer, constitutes an offence punishable with an imprisonment term not exceeding 5 years or a fine of N250,000 or both.⁵⁹ It is an offence for a person to unlawfully refuse any officer of the NAPTIP to have access to any premises or fail to submit to a search by a person authorized to search him under the Trafficking Act 2015.⁶⁰ The punishment is imprisonment for a term not exceeding 5 years or a fine of not less than N250,000 or both.⁶¹ This same punishment is prescribed for a person who unlawfully assaults or obstructs any officer of NAPTIP or any person authorized by NAPTIP in the execution of his duty under the Act.⁶² A person who unlawfully fails to produce, conceals or attempts to conceal from an officer of NAPTIP, any book, document, information storage system or article in relation to which such officer has reasonable grounds to believe or suspect that an offence under the Act or any other law prohibiting trafficking in persons and protection of children, has been or is being committed, or which is liable to seizure under the Trafficking Act 2015; commits an offence punishable with an imprisonment term not exceeding 5 years or to a fine of not less than N250, 000 or to both.⁶³

Tampering with witnesses or evidence constitutes an offence under the Act. Section 34 of the Act provides that any person who tampers with a witness by intimidation, threats, blackmail, inducement or similar acts,⁶⁴ or evidence or exhibit by falsification, conversion, destruction or forgery, commits an offence under this Act and is liable on conviction to imprisonment for a term

⁵⁰ *Ibid*, Section 28(b) thereof.

⁵¹ *Ibid*, Section 28(b) thereof.

⁵² *Ibid*, Section 29 thereof.

⁵³ *Ibid*, Section 30(1) thereof.

⁵⁴ *Ibid*, Section 30(2) thereof.

⁵⁵ *Ibid*, Section 31(1) thereof.

⁵⁶ *Ibid*, Section 31(2) thereof.

⁵⁷ *Ibid*, Section 31(3) thereof.

⁵⁸ *Ibid*, Section 32(1)(a) thereof.

⁵⁹ *Ibid*, Section 32(1)(b) thereof.

⁶⁰ *Ibid*, Section 32(2)(a) thereof.

⁶¹ *Ibid*, Section 32(2)(c) thereof.

⁶² *Ibid*, Section 32(2)(b) thereof.

⁶³ *Ibid*, Section 32(2)(c) thereof.

⁶⁴ *Ibid*, Section 34(a) thereof.

not exceeding 5 years or to a fine not less than N250, 000 or to both.⁶⁵

With regards to the duty of airline owners and commercial transport carriers to prevent trafficking in persons, section 35(1) of the Act provides that every airline operator, sea vessel operator, commercial carrier, tour operator and travel agent is under obligation not to aid and abet facilitate or promote trafficking in persons;⁶⁶ pornography or exploitation in tourism.⁶⁷ Section 35(2) compels every airline operator, sea vessel operator, commercial carrier, tour operator and travel agent to notify its clients of its obligation not to aid or facilitate trafficking in persons. Section 35(3) provides that every airline operator, sea vessel operator, commercial carrier, tour operator and travel agent is required to (a) provide a clause in contracts with corresponding suppliers in destination countries, requiring the suppliers to comply with the obligations stated in sections 35(1) and (2) of the Act; (b) refrain from utilizing messages on printed materials, video or the internet that could suggest or allude to behaviour incompatible with the objectives of the Trafficking Act; (c) inform their staff of their obligations under the Trafficking Act, and (d) include clauses regarding their obligations under the Act in their conditions of service. A violation of any of the provisions under sections 35(1) and (2) attracts a fine not exceeding N10,000,000 in addition to any other punishment prescribed in any other law or enactment.⁶⁸

Criminal Code Act

The Criminal Code Act prohibits some elements of trafficking in persons which are also prohibited under the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015. However, unlike the Trafficking Act, the Criminal Code Act is only applicable in the Southern part of Nigeria. Section 223 of the Act prohibits the procurement of a girl or woman for the purpose of unlawful carnal connection or prostitution, punishable with two years imprisonment term. This is obviously too low for an offence as serious

as forced prostitution considering its negative effects.

Procuring the defilement of a trafficked person through the use of threats, intimidation or fraud is prohibited under section 224 of the Criminal Code Act, punishable with an imprisonment term of two years. Administering drugs or any other thing with intent to stupefy or overpower a trafficked person constitutes an offence under section 224(3) of the Criminal Code Act, punishable with two years imprisonment.

Abducting a girl with intent to traffick her for the purpose of prostitution constitutes an offence under section 225 of the Criminal Code Act, punishable with two years imprisonment. Abducting a girl or woman for the purpose of forced marriage or to be carnally known by any person, constitutes an offence under section 361 of the Criminal Code Act, punishable with seven years imprisonment.

Detaining a trafficked person in a place with intent to defile the person is an offence under section 365 of the Criminal Code Act punishable with an imprisonment term of two years. In addition, section 226 provides that any person who (1) detains a girl or woman against her will in or upon any premises so that she can be unlawfully carnally known by any man whether a particular man or not; or (2) detains a girl or woman against her will in a brothel, Is liable on conviction to imprisonment for two years.

Conspiracy to induce a woman or girl to have unlawful carnal knowledge with a man is an offence under section 227 of the Criminal Code Act, punishable with three years imprisonment.

Penal Code

The Penal Code is a criminal code applicable only in the Northern part of Nigeria. Similar to the Criminal Code Act, it prohibits some elements of trafficking in persons. Trading in trafficked persons for immoral purposes constitutes an offence under the Penal Code. Section 278 of the

⁶⁵ *Ibid*, Section 34(b) thereof.

⁶⁶ *Ibid*, Section 35(1)(a) thereof.

⁶⁷ *Ibid*, Section 35(1)(b) thereof.

⁶⁸ *Ibid*, Section 35(4) thereof.

Penal Code provides that whoever buys, sells, hires, lets to hire or otherwise obtains possession or disposes of any person under the age of eighteen years with intent that such person shall be employed or used for the purpose of prostitution or for any unlawful or immoral purpose or knowing it to be likely that such minor will be employed or used for any such purpose shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.

Confining the movement of a trafficked person is an offence under section 270 of the Penal Code punishable with a maximum of two years imprisonment or with a fine or both. Involving a trafficked person in forced labour contravenes the provisions of section 280 of the Penal Code, punishable with a maximum of one-year imprisonment or fine or both. Clearly, this penalty is too small and the deterrent value is lost especially where the traffickers are offered the option of a fine in lieu of imprisonment.

Importing a girl into Nigeria for the purpose of prostitution, pornography or other immoral purposes is prohibited under section 276 of the Penal Code punishable with a maximum of ten years imprisonment and a fine. Procuring a girl for the purpose of sexual activity is prohibited under section 275 Penal Code punishable with a maximum of ten years imprisonment and a fine. Both sections 275 and 276 of the Penal Code prescribe the maximum penalty in addition to a fine but do not have a minimum penalty. This is a shortcoming as it is left to the discretion of the judge to impose any minimum, which may prove inadequate considering the gravity of the offence.

Also, section 281 of the Penal Code provides that whoever, in order to gratify the passion of another person, procures, entices, or leads away, even with her consent, any woman or girl for immoral purpose shall be punished with a maximum of seven years imprisonment term and also a fine. Procuring a married woman for the purpose of

prostitution constitutes an offence under section 389 of the Penal Code punishable with a maximum of two years imprisonment or a fine or both. Kidnapping a person for the purpose of trafficking such a person is an offence under section 273 of the Penal Code punishable with a maximum of ten years imprisonment and a fine.⁶⁹ Similarly, kidnapping a married woman with the intent that she may have illicit sexual intercourse with any person is an offence under section 389 of the Penal Code, punishable with two years imprisonment or a fine or both.

Labour Act

Forced labour is an offence under section 73(1) of the Labour Act punishable with a maximum of 2 years imprisonment or N1, 000 fine or both. The Act also prohibits child labour under section 59(1)(a) of the Act. In addition, section 59(6) of the Act provides that no young person shall be employed in any employment which is injurious to his health, dangerous or immoral. Section 64 of the Labour Act provides that any person who involves a child in child labour as prohibited under section 59 shall be guilty of an offence and on conviction shall be liable to a fine not exceeding N100. This penalty is ridiculously low for an offence as grievous as child labour.

Child's Rights Act

Under the *Child's Rights Act*, trafficking in children violates the right of children to human dignity under section 11, right to freedom of movement under section 9, right to health under section 13, right to survival and development under section 4, right to rest and leisure under section 12 and the right to education under section 15. The sale of babies after birth violates the right of the child to parental care, protection and maintenance under section 14 of the *Child's Rights Act* and the right to a name under section 5 of the Act. Section 5(1) of the Act provides that every child has a right to a name and accordingly shall be given a name on his birth or on such other

⁶⁹ Penal Code, Section 272 thereof defines abduction as forcefully compelling or by any deceitful means inducing a person to go from any place.

date as is dictated by the culture of his parents or guardian.

Child's Rights Act prohibits the sale of children such as the sale of babies or their body parts under section 30(1), punishable with a prison term of not more than ten years. Also, child labour is prohibited under section 28 of the Act punishable with a prison term of not more than five years or a fine of not more than 50, 000 naira or to both such fine and imprisonment.⁷⁰ Where the offence is committed by a body corporate, any person who at the time of the commission of the offence was a proprietor, director, general manager or other similar officer, servant or agent of the body corporate shall be deemed to have jointly and severally committed the offence and will be liable on conviction to a fine of two hundred and fifty thousand naira.⁷¹

Involving a trafficked child in begging for alms, hawking, sexual or other immoral activities and any other unlawful purpose, is prohibited under section 30(2) of the Act. Unfortunately, no penalty is prescribed in the Act for the violation of the offences stated under section 30(2) of the Act. Thus, this provision is very defective as it lacks a sanction attached to it for non-compliance. The implication is that law enforcement agents will not be able to prosecute a trafficker under this section even though he has committed the offence.

Abduction of a child with the intention to traffick the child constitutes an offence under section 27 of the Act punishable with a prison term of not more than ten years.⁷² Trafficking a child for the purpose of producing and trafficking in drugs, constitutes an offence under section 25(1) of the Act, punishable with imprisonment for life. In addition, section 30(2)(f) provides that no child shall be procured for any activity in the production or trafficking of illegal drugs and any other activity relating to illicit drugs as specified in the *National Drug Law Enforcement Agency Act*.⁷³ Unfortunately, the Act does not stipulate any

penalty for the offences stated under section 30(2)(f) of the Act.

Involving trafficked children in armed conflict violates the provisions of section 34(1) of the Act. Thus, the Act prohibits the recruitment of a child into any of the branches of the Armed Forces of the Federal Republic of Nigeria. Unfortunately, however, no penalty is prescribed in the Act for a violation of the provisions of section 34 of the Act.

CONCLUSION

Trafficking in persons is a global crime affecting nearly all countries of the world. It is the worst form of human slavery, in which sexual and labour exploitations, profit and greed take precedence over human dignity and fairness. Trafficking in persons can only be eliminated within effective policies, workable institutions, good governance and enforceable legal framework.

Until and unless the various deficiencies in the legal framework, judicial decisions and effective operations of institutions established to combat trafficking in persons are addressed, eliminating trafficking in persons in Nigeria, or anywhere else for that matter, would continue to be a mirage. In the case of Nigeria, it is desirable that the lacunae in some of the relevant laws be removed by a prescription of the appropriate penalty for offences committed under the provisions of those laws. Penalties stipulated under the Criminal Code Act and the Penal Code Act, in particular, require upward review to bring them up to date within the context of the contemporary scale of criminal justice and administration, as well as be commensurate with the gravity of the offence of human trafficking. Also, all laws prohibiting trafficking in persons and its purposes in Nigeria should be reviewed periodically, to prevent obsolescence.

⁷⁰ *Child's Rights Act*, Section 28(3).

⁷¹ *Ibid*, Section 28(4) thereof.

⁷² *Ibid*, Section 27(2)(b) thereof.

⁷³ Cap. N30, Revised Edition (Laws of the Federation of Nigeria) Act 2007.

RECOMMENDATIONS

Indeed, the justice of the matter demands that there is no option of fine for offenders guilty and convicted of human trafficking. Perpetration of these acts leads to moral decadence in society and destroys the future of Nigerian men, women and children and that of the nation as a whole. Hence, offenders should be imprisoned and not given an option of fine, in order to deter potential offenders. Should there be an option of a fine, such a fine must be high enough to discourage the commission of the offence, such as a minimum of ₦1, 000, 000 to higher amounts, depending on the severity of the offence.

Victims should be enlightened on ways of seeking redress in cases of trafficking and assistance should be given in this regard. Judicial and administrative mechanisms should be strengthened where necessary to enable victims to obtain prompt redress. Where they are unable to afford the services of a legal practitioner, they should be advised to visit the Legal Aid Council⁷⁴ for legal assistance. In addition, courts of law in Nigeria should ensure speedy trials of human trafficking cases so that those found guilty are convicted and sentenced accordingly.

Due to the transnational nature of trafficking in persons, countries of origin, transit and destination should collaborate in their efforts to prevent trafficking in persons, protect victims and prosecute offenders. Hence, the Federal Government of Nigeria should strengthen bilateral and multilateral agreements to garner international cooperation and also enter into new ones towards eliminating trafficking in persons in Nigeria. This should include the coordination of laws, investigations and the confiscation of crime proceeds of traffickers.

Parents, family members, the legislature, the Government at all levels in Nigeria, law enforcement agencies, monarchs and other community leaders, religious leaders, Non-

Governmental Organizations (NGOs), the media, all Nigerian citizens, and international and regional organizations, all have important roles to play in eliminating trafficking in persons in Nigeria.

Nigerians should break the supply and demand chain of trafficking in persons. They should abstain from patronising agents or middlemen who traffick people, particularly children, for the purpose of domestic work, prostitution, work in the agricultural and manufacturing sectors, etc. Also, parents and guardians should stop giving up their children to traffickers or their agents in exchange for money. These children should be enrolled in schools or engaged in vocational training rather than being supplied to traffickers. In addition, adults should engage in small-scale businesses, skill acquisition or seek employment rather than getting involved in human trafficking in order to survive.

NAPTIP, Nigeria Police, Immigration, Customs Services and other law enforcement agencies in Nigeria should be adequately funded and equipped with modern equipment that meets international standards and should be regularly trained on the prevention and control of trafficking in persons. The Government should also give adequate remuneration and incentives to law enforcement agencies in Nigeria in order to increase their efficiency and reduce corruption.

There is a need to increase the level of awareness among the populace on the problems associated with trafficking in persons. This should be carried out by the Government at all levels in Nigeria, NGOs, schools and the media. Anti-trafficking in persons' posters and handbills should be pasted and distributed in schools (from primary to tertiary institutions and centres for vocational training), town halls, hospitals, police stations, petrol stations, hotels, guest houses etc. Also, billboards which display graphics on trafficking in persons and its consequences written in both English and local languages, should be erected at

⁷⁴ The Legal Aid Council was established under the *Legal Aid Act*, Cap. L9 Revised Edition (Laws of the Federation of Nigeria) Act 2007 as the body charged with responsibility for

provision of legal aid and advice in both criminal and civil matters to persons whose income does not exceed ₦5000 per annum; sections 1 & 9 of the Act.

strategic points within each town in Nigeria. Email addresses, websites, and emergency telephone numbers of NAPTIP officials who can be contacted in cases of human trafficking should also be written on the billboards, handbills and posters. Such awareness should be carried out in urban and rural areas, marketplaces, schools and border towns and villages. The wife of the President of Nigeria and wives of all State Governors and Local Government Chairmen in Nigeria should incorporate the elimination of trafficking in persons into their pet projects.

NAPTIP offices should be established in all State capitals and possibly in two other towns in each State apart from the State capital. This would enhance easy access to NAPTIP offices rather than people having to travel long distances to report cases of trafficking in persons. The long-distance could discourage citizens from reporting such cases.

Monarchs and other community leaders should formulate strategies for the elimination of trafficking in persons considering the peculiarities of their communities. Monitoring Task Force Committees should be set up in each community to keep a constant watch on the communities and report cases of trafficking in persons to law enforcement agents or the NAPTIP office. Religious leaders should also enlighten their members on the mode, trend and consequences of trafficking in persons.

Government at all levels in Nigeria should invest in education and provide alternative economic opportunities for Nigerian youths. This will greatly reduce the number of persons available to be trafficked. More importantly, the Federal Government should provide basic amenities and infrastructures, and address the problems of poverty and unemployment in Nigeria. This can be achieved through the implementation of policies aimed at poverty reduction and equitable distribution of resources among the citizens.

Also, Nigerians, particularly women, should be empowered economically. They should have easy access to loans with minimum collateral

requirements for the establishment of businesses. This would help reduce poverty and consequently, trafficking in persons in Nigeria.

On the whole, the Federal Government's *National Policy and Action Plan on Child Labour*, based on the *National Policy on Child Labour* should not be another paper-Tiger; a mere programmatic agenda and strategy. Instead, it should be made a veritable instrument for the eradication of trafficking in persons and other forms of child labour in Nigeria.